

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 18, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP465**

**Cir. Ct. No. 2015PR33**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE ESTATE OF ELIZABETH H. LAUER:  
RICHARD A. LAUER,**

**APPELLANT,**

**V.**

**MARYBETH LIPP AND DENNIS LAUER, PERSONAL REPRESENTATIVE  
FOR THE ESTATE OF ELIZABETH H. LAUER,**

**RESPONDENTS.**

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APPEAL from an order of the circuit court for Outagamie County:  
GREGORY B. GILL, JR., Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Richard Lauer appeals an order appointing his brother, Dennis Lauer, personal representative of their mother Elizabeth Lauer’s estate. Richard argues: (1) the circuit court improperly took judicial notice of his mother’s guardianship proceedings; (2) the circuit court judge should have recused himself because he prejudged the matter; and (3) the court should not have rejected Richard’s request to become personal representative without first finding him unsuitable.<sup>1</sup> We reject these arguments and affirm the order.

¶2 Lauer argues that the circuit court failed to follow the proper procedure for taking judicial notice under WIS. STAT. § 902.01(5) (2015-16).<sup>2</sup> Although the circuit court stated it was appropriate to take “judicial notice of what has happened in [the guardianship proceedings],” the court’s consideration of those proceedings does not fall under the judicial notice statutes. A judicially noticed fact is one not subject to reasonable dispute because it is generally known within the jurisdiction or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *See* WIS. STAT. § 902.01(2). The procedures for taking judicial notice do not apply to the court’s personal familiarity with the parties.

¶3 At the beginning of the hearing, the circuit court informed the parties it would have a “difficult time envisioning any scenario where I would name either you [Richard] or Ms. Lipp [Richard’s and Dennis’s sister who also

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<sup>1</sup> Lauer raises numerous other issues on appeal addressing his mother’s guardianship proceedings, which were the subject of numerous previous appeals. An appeal from the order appointing a personal representative does not invite further argument on those issues, and we will not address them.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

petitioned to be named personal representative] as personal representative.” The court further stated, “I haven’t prejudged the case. I’ve had four years to get to know you, and in that time, I am ... quite confident that you would not serve the estate in the best interest of the collective heirs.” From these comments, Richard contends the judge should have recused himself because he prejudged the matter.

¶4 WISCONSIN STAT. § 757.19 governs when a judge shall disqualify him or herself. None of the objective factors that mandate recusal apply in this case. The only consideration is whether § 757.19(2)(g) applies. That paragraph mandates a judge’s disqualification “only when that judge makes a determination that, in fact or in appearance, he or she cannot act in an impartial manner.” *State v. American TV & Appliance of Madison, Inc.*, 151 Wis.2d 175, 183, 443 N.W.2d 662 (1989). Whether the subjective situation exists and requires disqualification is based on the judge’s own determination of whether he or she may remain impartial. *State v. Harrell*, 199 Wis. 2d 654, 658, 546 N.W.2d 115 (1996). Appellate review of that determination is limited to establishing whether the judge made a determination requiring disqualification. *Id.* at 663-64. The statute does not require disqualification in situations where: (1) one other than the judge objectively believes there is an appearance that the judge is unable to act in an impartial manner; or (2) the judge’s impartiality can reasonably be questioned by someone other than the judge. *American TV*, 151 Wis. 2d at 183. Because Judge Gill repeatedly found he could be impartial, there is no basis for this court to decide he should have recused himself.

¶5 Finally, the circuit court properly exercised its discretion when it appointed Dennis personal representative of the estate. Contrary to Richard’s argument, the court was not required to first find other nominees unsuitable. This is not a situation where the court was removing the personal representative

nominated in a will. Although some of the heirs believed there was a will, none was produced, let alone one that named Richard personal representative. Richard apparently believes his appointment as his mother's agent under a durable power of attorney makes it likely that his mother named him personal representative in a will. However, those two roles are distinctly different.

¶6 Because the appointment of a personal representative does not require a finding that other nominees are unsuitable, the circuit court had discretion under WIS. STAT. § 856.21 to appoint the person the court found best suited to be the personal representative. Here, the record supports the court's finding that Dennis was best suited to fill that role. Eight of the ten heirs requested Dennis' appointment. The court reasonably found the other heirs would more likely cooperate with Dennis, including giving him access to places the alleged will might be found. In addition, Richard had made a claim against the estate for more than six times his estimated value of the estate, raising reasonable questions about whether he felt entitled to the entire estate.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

